



State of Washington  
REPORT OF EXAMINATION  
FOR WATER RIGHT APPLICATION

PRIORITY DATE  
5/3/2000

WATER RIGHT NUMBER  
S3-30304

MAILING ADDRESS  
Scott Byerley  
501 West Langdon Road  
Walla Walla, WA 99362

Quantity Authorized for Withdrawal or Diversion

WITHDRAWAL OR DIVERSION RATE

UNITS  
CFS

ANNUAL QUANTITY (AF/YR)

Denied

Purpose

PURPOSE	WITHDRAWAL OR DIVERSION RATE		UNITS CFS	ANNUAL QUANTITY (AF/YR)		PERIOD OF USE (mm/dd)
	ADDITIVE	NON-ADDITIVE		ADDITIVE	NON-ADDITIVE	

Denied

ADDITIVE	IRRIGATED ACRES		PUBLIC WATER SYSTEM INFORMATION	
	NON-ADDITIVE		WATER SYSTEM ID	CONNECTIONS

Source Location

COUNTY	WATERBODY	TRIBUTARY TO	WATER RESOURCE INVENTORY AREA
WALLA WALLA	Walla Walla River	Columbia River	32-WALLA WALLA

SOURCE FACILITY/DEVICE	PARCEL	WELL TAG	TWP	RNG	SEC	QQ Q	LATITUDE	LONGITUDE

Datum: NAD83/WGS84

Place of Use (See Attached Map)

Denied

Development Schedule

BEGIN PROJECT	COMPLETE PROJECT	PUT WATER TO FULL USE
NA	NA	NA

## Provisions

### Findings of Facts

Upon reviewing the investigator's report, I find all facts, relevant and material to the subject application, have been thoroughly investigated. Furthermore, I concur with the investigator that water is not available from the source in question, impairment will occur and that there will be detriment to the public interest.

Therefore, I ORDER **denial** of Application No. S3-30304.

### Your Right To Appeal

You have a right to appeal this Order to the Pollution Control Hearing Board (PCHB) within 30 days of the date of receipt of this Order. The appeal process is governed by Chapter 43.21B RCW and Chapter 371-08 WAC. "Date of receipt" is defined in RCW 43.21B.001(2).

To appeal you must do the following within 30 days of the date of receipt of the Order.

File your appeal and a copy of this Order with the PCHB (see addresses below). Filing means actual receipt by the PCHB during regular business hours.

- Serve a copy of your appeal and this Order on Ecology in paper form - by mail or in person. (See addresses below.) E-mail is not accepted.
- You must also comply with other applicable requirements in Chapter 43.21B RCW and Chapter 371-08 WAC.

Street Addresses	Mailing Addresses
<b>Department of Ecology</b> Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503	<b>Department of Ecology</b> Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608
<b>Pollution Control Hearings Board</b> 1111 Israel RD SW Ste 301 Tumwater, WA 98501	<b>Pollution Control Hearings Board</b> PO Box 40903 Olympia, WA 98504-0903

Signed at Spokane, Washington, this       day of       2012.

\_\_\_\_\_  
Keith L. Stoffel, Section Manager

For additional information visit the Environmental Hearings Office Website: <http://www.eho.wa.gov>. To find laws and agency rules visit the Washington State Legislature Website: <http://www1.leg.wa.gov/CodeReviser>.

## INVESTIGATOR'S REPORT

Application for Water Right – Byerley  
Water Right Control Number S3-30304  
Dan Tolleson, Department of Ecology

### BACKGROUND

On August 16, 2011, letters were sent to all applicants for new surface water within the Walla Walla Basin, indicating that water was generally no longer available within the basin. Each applicant had the opportunity to either withdraw his or her application or request a formal decision. On September 7, 2011, we received Mr. Byerley's request to have his application processed and a formal decision issued.

#### Attributes of Proposal

An application to appropriate public ground water was submitted by Scott Byerley to the Department of Ecology on May 3, 2000. The application was accepted and assigned Surface Water Application No. S3-30304. The applicant proposes to divert water from the Walla Walla River in the amount of 3 cubic feet per second from December 1 to April 30, for the irrigation of 40 acres.

Table 1 Application Summary

<b>Name</b>	Byerley
<b>Priority Date</b>	5/3/2000
<b>Instantaneous Rate</b>	3 cfs
<b>Annual Quantity</b>	160 acre-feet
<b>Purpose(s) of Use</b>	Irrigation of 40 acres
<b>Period of Use</b>	12/1 – 4/30
<b>Place(s) of Use</b>	Within the SW¼SW¼ of Section 31, T. 7 N., R. 33 E.W.M.

Table 2 Proposed Sources Diversions

Source Name	Parcel	Twp	Rng	Sec	QQ Q	Latitude	Longitude
1 Walla Walla River	330606310003	6	33	6	NE¼SW¼	46.0280	118.7313
2 Walla Walla River	330606220007	6	33	6	SW¼SW¼	46.0249	118.7372
3 Walla Walla River	320601110002	6	32	1	SE¼SE¼	46.0237	118.7467
4 Walla Walla River	320301220002	6	32	1	SW¼NW¼	46.0304	118.7607
5 Walla Walla River	320736220005	7	32	36	NW¼NW¼	46.0505	118.7579

#### Legal Requirements for Approval of Appropriation of Water

RCW 90.03 authorizes the appropriation of public water for beneficial use and describes the process for obtaining water rights. Laws governing the surface water right permitting process are contained

in RCW 90.03.250 through 90.03.340. In accordance with RCW 90.03.290, determinations must be made on the following four criteria in order for an application for water rights to be approved:

- Water must be available
- There must be no impairment of existing rights
- The water use must be beneficial
- The water use must not be detrimental to the public interest.

WAC 173-532 authorizes the management of all water within the Walla Walla River Basin, within Washington (WRIA 32). In accordance with WAC 173-532-045, future permits may only be approved if they meet the applicable requirement of law and one of the following criteria:

- Non consumptive uses
- Proposed water is from the basalt aquifer
- Use of proposed surface water occurs during non-closures and is for an environmental enhancement project.

This report serves as the written findings of fact concerning all things investigated regarding Water Right Application Number S3-30304.

#### Public Notice

RCW 90.03.280 requires that notice of a water right application be published once a week, for two consecutive weeks, in a newspaper of general circulation in the county or counties where the water is to be stored, diverted and used. Notice of this application was published in the Walla Walla Union-Bulletin during the weeks of October 6<sup>th</sup> and 13<sup>th</sup>, 2011. No protests were received.

#### Consultation with the Department of Fish and Wildlife

The Department must give notice to the Department of Fish and Wildlife of applications to divert, withdraw or store water (RCW 77.57.020).

#### State Environmental Policy Act (SEPA)

A water right application is subject to a SEPA threshold determination (i.e., an evaluation whether there are likely to be significant adverse environmental impacts) if any one of the following conditions are met.

- (a) It is a surface water right application for more than 1 cubic feet per second, unless that project is for agricultural irrigation, in which case the threshold is increased to 50 cubic feet per second, so long as that irrigation project will not receive public subsidies;
- (b) It is a groundwater right application for more than 2,250 gallons per minute;
- (c) It is an application that, in combination with other water right applications for the same project, collectively exceed the amounts above;
- (d) It is a part of a larger proposal that is subject to SEPA for other reasons (e.g., the need to obtain other permits that are not exempt from SEPA);
- (e) It is part of a series of exempt actions that, together, trigger the need to do a threshold determination, as defined under WAC 197-11-305.

Because this application, in combination with other water rights, would entail the withdrawal of more than 2,250 gallons per minute, it is subject to SEPA.

After review of a completed environmental checklist and other information on file with Ecology, this proposal was determined to not have a significant adverse impact on the environment. A final Determination of Non-Significance was issued by Ecology on February 14, 2012, stating that no environmental impact statement is required.

## **INVESTIGATION**

---

In considering the proposed application, the investigation included, but was not limited to, research and review of: (1) appropriate rules and statutes; (2) other water rights, permits, claims, and applications in the vicinity; (3) USGS topographic maps and air photographs; (4) diversion works and proposed place of use; (5) Chapter 173-532 WAC Water Resources Program for the Walla Walla River Basin, WRIA 32 and Watershed Planning; (6) State of Washington Irrigation Guide (Natural Resources Conservation Service 1997); (7) Walla Walla River Adjudication; and (8) discussions with Department of Ecology regional program staff.

A field investigation was conducted on November 7, 2011, by Dan Tolleson. Mr. Byerley owns the proposed place of use and the proposed points of diversion, with the exception of Diversion No. 1. The project is located, approximately three miles southwest of Touchet, Washington.

The Walla Walla River, which is the proposed source of this project, is the primary body of water that drains the WRIA 32 basin. This relatively small river has its headwaters in the Blue Mountains of Oregon and flows in a generally westerly direction to its confluence with the Columbia River near Wallula, Washington. Much of the river valley lying within Washington is extensively cultivated. The Washington portions of the river, along with many of its tributaries were adjudicated in the 1920s. This was in response to limited water availability that resulted in a specific water use and regulation schedule.

### **Proposed Use and Basis of Water Demand**

---

The proposed use of this application is to provide winter and early spring water from December 1 to April 30 for the irrigation of 40 acres. This winter/spring water is proposed to augment the existing water right permit by filling the soil profile in colder weather and providing water for irrigation until April 30. Since this proposed season of use overlaps the existing irrigation permit and the soil profile will be filled, there will be a reduction of use under Ground Water Permit No. G3-29366. The use of surface water instead of using the existing ground water permit is intended to reduce pumping costs. Surface water is appreciably cheaper to pump than the existing permit, which has a source from a basalt well. The annual quantity requested is 4 acre-feet per acre for a total of 160-acre-feet.

### **Impairment Considerations**

---

Impairment is an adverse impact on the physical availability of water for a beneficial use that is entitled to protection. A water right application may not be approved if it would:

- Interrupt or interfere with the availability of water to an adequately constructed groundwater withdrawal facility of an existing right. An adequately constructed groundwater withdrawal

facility is one that (a) is constructed in compliance with well construction requirements and (b) fully penetrates the saturated zone of an aquifer or withdraws water from a reasonable and feasible pumping lift.

- Interrupt or interfere with the availability of water at the authorized point of diversion of a surface water right. A surface water right conditioned with instream flows may be impaired if a proposed use or change would cause the flow of the stream to fall to or below the instream flow more frequently or for a longer duration than was previously the case.
- Interrupt or interfere with the flow of water allocated by rule, water rights, or court decree to instream flows.
- Degrade the water quality of the source to the point that the water is unsuitable for beneficial use by existing users (e.g., via sea water intrusion).

The proposed source is located within the Walla Walla River Adjudicated Basin. Water is not always available for the existing water rights within the basin. The additional consumptive water use proposed under this project may impair senior rights in dry years, by reducing available water. The Walla Walla River does not always meet its instream flows, which would also be impaired. With approval of this application, less water would flow in the Walla Walla River, causing further impairment to the instream flow and potentially senior water rights.

### Water Availability

For water to be available for appropriation, it must be both physically and legally available.

#### ***Physical availability***

For water to be physically available for appropriation there must be ground or surface water present in quantities and quality and on a sufficiently frequent basis to provide a reasonably reliable source for the requested beneficial use or uses. In addition, the following factors are considered:

- Volume of water represented by senior water rights, including federal or tribal reserved rights or claims;
- Water right claims registered under Chapter 90.14 RCW
- Ground water uses established in accordance with Chapter 90.44 RCW, including those that are exempt from the requirement to obtain a permit; and
- Potential riparian water rights, including non-diversionary stock water.
- Lack of data indicating water usage can also be a consideration in determining water availability, if the department cannot ascertain the extent to which existing rights are consistently utilized and cannot affirmatively find that water is available for further appropriation.

#### ***Legal availability***

To determine whether water will be legally available for appropriation, the following factors are considered:

- Regional water management plans – which may specifically close certain water bodies to further appropriation.
- Existing rights – which may already appropriate physically available water.
- Fisheries and other instream uses (e.g., recreation and navigation). Instream needs, including instream and base flows set by regulation. Water is not available for out of stream uses where further reducing the flow level of surface water would be detrimental to existing fishery resources.

- The Department may deny an application for a new appropriation in drainages where adjudicated rights exceed the average low flow supply, even if the prior rights are not presently being exercised. Water would not become available for appropriation until existing rights are relinquished for non-use by state proceedings.

In accordance with WAC 173-532-045, any request for a new water right appropriation, within WRIA 32, must meet a specific list of criteria, in addition to the applicable requirement of law before a permit can be issued. This application requests a consumptive irrigation water right from a surface source, the Walla Walla River, from December 1 to April 30. The only consumptive projects that can receive a new water right permit, in accordance with WAC 173-532, are those that provide an environmental enhancement. This proposed project will not meet that requirements set forth in WAC 173-532, meaning water is not legally available for this project.

#### Beneficial Use

---

The use of water for irrigation purposes is defined in statute as a beneficial use (RCW 90.54.020(1)).

#### Public Interest Considerations

---

There has been no public expression of protest or concern regarding the subject proposal. However, findings through this investigation indicate that approval of this proposed water right would be a detrimental impact to the public welfare. The applicant is proposing to divert water from a source closed by rule (WAC 173-532). This rule was updated in August of 2007, with extensive public participation by way of pre-proposal workshops, formal hearings and rule implementation workshops. The result of this was to close all surface sources to new consumptive appropriations unless there is an environmental benefit. This indicates that issuing new water for any other uses than those expressly listed in the rule is not in the public interest.

#### Other Rights Appurtenant to the Place of Use

---

Ground Water Permit No. G3-29366 is the only overlapping right within the proposed place of use. The relationship between this overlapping permit and the proposed application will not be determined in this report since water is not available.

#### Conclusions

---

In conclusion, water is not available for the proposed appropriation. It is not legally available according to the WAC 173-532, and issuance of a new appropriation is not in the public interest.

#### RECOMMENDATIONS

---

Based on the above investigation and conclusions, I recommend that this request for a water right be **denied**.

---

*Dan Tolleson, Report Writer*

*Date*

*If you need this publication in an alternate format, please call the Water Resources Program at (360) 407-6600. Persons with hearing loss can call 711 for Washington Relay Service. Persons with a speech disability can call 877-833-6341.*